

March 17, 2023

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Mr. James Wasilak  
Chief of Zoning  
Dept. of Community Planning and  
Development Services  
City of Rockville  
111 Maryland Avenue  
Rockville, MD 20850

Re: BXP – Pre-Application Meeting Submission for Level 2 Site Plan Approval – Shady Grove Innovation District (“Application”)

Dear Mr. Wasilak:

On behalf of our client, BXP (the “Applicant”) and pursuant to Article 7 of the City of Rockville’s Zoning Ordinance (“Zoning Ordinance”), enclosed please find the Pre-Application Meeting Submission for Level 2 Site Plan for the development of approximately: (i) 330 multi-family units, (ii) a 160,000-square-foot life-sciences building, and (iii) a temporary parking lot for the life-sciences building (the “Project”) on 2 Choke Cherry Road and 4 Choke Cherry Road (the “Property”).

1. The Property

The Property contains approximately 12.30 acres and consists of two record lots identified as Lot 5 on Plat No. 9512 (2 Choke Cherry Road), and Lot 6 on Plat No. 8640 (4 Choke Cherry Road).<sup>1</sup> The Property is located in the northeast quadrant of the intersection of Shady Grove Road and Choke Cherry Road. Lot 5 is currently improved with an approximately 100,000 square-foot (SF) office building with surface parking and Lot 6 is currently improved with an approximately 62,000-SF office building with surface parking. Both buildings will be demolished to allow construction of the Project.<sup>2</sup>

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<sup>1</sup> A small portion of a third lot, identified as Lot 8 on Plat No. 9700, is also included in the Application to allow construction of a Phase 1 road.

<sup>2</sup> The demolition of these buildings will occur under separate permits issued by the City and is outside the scope of the Level 2 Site Plan for the Project. However, as previously discussed with City staff, the Project will utilize the trips, WSSC fixture credits, impact tax credits, and all other advantages associated with the demolition of these buildings.

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The Property is zoned Mixed Use Employment (“MXE”) and is part of a larger tract containing approximately 31 acres and bounded by Choke Cherry Road, Shady Grove Road and Gaither Road (the “Tract”). The balance of the Tract is also zoned MXE and is improved with office buildings and surface parking lots.

The Project is the first phase of the redevelopment of the Tract into a mixed-use district focused on life science uses known as the Shady Grove Innovation District (“SGID”). The SGID, as envisioned by the Applicant, will be a community of innovators consisting of approximately 1.3 million square life science uses and ±330 apartment units with structured parking and an emphasis on transit use. If the Application for the Project is approved, the Applicant will file a Project Plan application for the balance of the SGID within 24 months of such approval pursuant to Section 25.07.16.f of the Zoning Ordinance.

## 2. Previous Approvals

The existing improvements on Lot 5 were constructed pursuant to Use Permits 341-67 and 124-29. The improvements on Lot 6 were constructed pursuant to Use Permits 584-72 and 316-84.

The Property, as part of the Tract, is also subject to Project Plan PJT-2017-00007, approved for mixed-use redevelopment in 2019 (the “Project Plan”). The development approved pursuant to the Project Plan has not been implemented. If the Project is approved, the Applicant will pursue amendment or abandonment of the Project Plan pursuant to the provisions of Section 25.07.16.f of the Zoning Ordinance.<sup>3</sup>

## 3. The Project

As shown on the Site Plan submitted with the Application, the Project proposes development of approximately: (i) 330 multi-family units in one building with dedicated structured parking, (ii) a 160,000-square-foot life-sciences building, and (iii) a temporary surface parking lot for the life-sciences building. The Project embodies the principals of good urban planning by locating the proposed buildings close to the streets on which the Project fronts. Lining the streets with buildings creates an active and inviting streetscape that encourages walking and biking. Further street activation will be provided through the Project’s open spaces, including the transit plaza, described above.

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<sup>3</sup> Site Plan STP2020-00393 was approved in 2020 for the development of townhouses on a portion of the Property. That Site Plan was abandoned by request of the Applicant.

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The Project fits within the heights and densities allowed in the MXE Zone. Both buildings will be 5 stories in height. The multi-family building will have a maximum height of approximately 75 feet in height and the life sciences building will have a height of approximately 82 feet.

The Project provides setbacks from the property lines that meet or exceed City requirements as shown on the plans included with this Application. In particular, no setbacks are required from Choke Cherry Road or Shady Grove Road and, therefore, the proposed buildings have been located close to these street frontages. Single-family housing in the King Farm community is located to the southeast of the Property. However, because of an intervening approximately 47-foot-wide parcel, which is preserved as forest under a Forest Conservation Easement ("FCE"), no buffers or setbacks are required. Nonetheless, the FCE itself provides a dense, planted buffer between the Project's multi-family building and the single-family development in the King Farm.

As shown on the Open Area and Public Use Space Plan included in this Application, the Project meets the requirements for open area and public use spaces. Specifically, the Project provides 20% of net lot area as Open Area (107,749), a portion of which will be Public Use Space. Section 25.13.05(b)(1) of the Zoning Ordinance requires 20% Open Area and 5% Public Use Space. As shown on the plans included in this submission, an open space located adjacent to the life sciences building will be designed with attractive and inviting landscape and hardscape features. This will serve as the main open space for the Project. In addition, as noted above, the Project includes a plaza adjacent to the bus stop to be located at the corner of Shady Grove Road and Choke Cherry Road.

Vehicular, pedestrian, and bicycle access to the Project will be via new private streets off of Shady Grove Road and Choke Cherry Road.<sup>4</sup> Proposed private road sections are included with this submission. These streets will begin to form the private street grid for the SGID. At full build-out, the SGID will have a nine block regular street grid to allow for safe and efficient circulation.

The Project is providing an 8'-10' shared use path along a portion of Shady Grove Road to meet the County's Bicycle Master Plan. Along Choke Cherry Road, the City's Bikeway Master Plan

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<sup>4</sup> The new streets proposed with the Project will be private streets to allow for an efficient layout, as well as safe circulation. The Applicant will file a separate road code waiver application with the Mayor and Council for these streets. This application will also include the modifications to the City's Secondary Residential Street standard, as shown on the plans included with this Application. The modifications will allow for wider sidewalks (8') than required, but narrower travel lanes (11'). All streets will be paved per the Business District Road Class II design standard. For Pioneer Street only, the Applicant is requesting a waiver to remove street parking on both sides.

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calls for a shared use path on the west side of the road, which is existing. Along the Project's side of the road, the Project includes reconstructing the sidewalk to a minimum of 8' in width to meet the City's required sidewalk width for a Business District 1 roadway.

In addition to providing safe and efficient vehicular, pedestrian, and bicycle access, the Project also includes a bus stop at the corner of Shady Grove Road and Choke Cherry Road. This bus stop is intended to serve the bus rapid transit (BRT) line planned to run along Shady Grove Road. The bus stop will be collocated with a transit plaza designed to make the area surrounding the bus stop active and inviting, thereby encouraging bus ridership.

It is anticipated that all necessary approvals and permits for the Project will be obtained in the first half of 2024, and construction will begin following issuance of permits.

#### 4. Community Outreach

Prior to submission of the Site Plan, a virtual pre-application area meeting was held on Tuesday, February 21, 2023. The minutes and sign-in sheet from that meeting are included in the Application. A Post-Application Area Meeting for the Project will be scheduled at the appropriate time after filing this Application. The Applicant also proactively met with the King Farm Citizens Assembly Board on Wednesday, February 15, 2023, to gather community input.

#### 5. Compliance with the Requirements for Approval as a Level 2 Site Plan

Projects that score 7-15 points under the criteria set forth in § 25.07.02(b) of the Zoning Ordinance may be approved with a Level 2 Site Plan. The Project scores 14 points and may be approved with a Level 2 Site Plan. The Project has a tract size of 12.37 acres (4 points), includes approximately 330 new dwelling units (4 points), includes 160,000 SF new non-residential density (4 points), and will generate fewer than 30 net new peak hour trips (1 point).<sup>5</sup> Additionally, less than 4% of the development within a quarter mile of the Property consists of residential development in a residential zone (1 point).

#### 6. Compliance with Zoning Ordinance's Site Plan Requirements

The Project satisfies the general findings of § 25.07.01.a.3(a) of the Zoning Ordinance. First, it will not adversely affect the health or safety of person residing or working in the neighborhood of the proposed use. The Project co-locates employment and residential uses in a manner that enhances the community with a life sciences building to attract cutting-edge, innovative

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<sup>5</sup> The trip generation calculation stated includes a credit for trips assigned to the two office buildings on the Property that will be demolished as noted above as well as an office building at 2094 Gaither Road on the tract that will be demolished as part of the development of the Project.

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companies and a multi-family building that will provide employees working in the life sciences building the option to live close to work. Fifteen percent of the dwelling units in the multi-family building will be Moderately Priced Dwelling Units (“MPDUs”). New residents and employees at the Project will also help maintain the vitality of existing retail and service uses in the vicinity, including those in Upper Rock Center, located directly across Choke Cherry Road from the Project, and the retail and restaurant uses in King Farm and to retail uses on the opposite side of Shady Grove Road. Further, the Project is designed as a walkable community with enhanced access to transit to reduce the impact on traffic.

Second, the Project will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood. The Project will replace underutilized office space with the first phase of the SGID, which will include significant employment uses. The Applicant will incorporate high-quality design in all aspects of the Project, including public open spaces, landscaping, and thoughtful architecture.

Third, as set forth more fully below, the Project will not overburden existing and programmed public facilities as set forth in Article 20 of the Zoning Ordinance and as provided in the adopted adequate public facilities standards.

Fourth, the Project will not adversely affect the natural resources or environment of the City or surrounding areas. The Property is currently improved with largely impervious surface – two low-scale structures and paved parking lots. The Project will include modern stormwater management features as detailed on the Storm Water Management Concept Plan included with this application.

With regard to forest conservation, the Application will strive to meet all afforestation requirements but cannot meet its on-site tree replacement requirements under City Code Section 10.5-22. Regarding significant tree replacement, the Applicant is required to replace 121 trees. (The number of unmet replacement trees may change as the design evolves.) It is the Applicant’s intent to satisfy the unmet tree replacement portion of its forest conservation requirements by payment of fee-in-lieu to the City. The Applicant designed the Project with an urban density that is essential to creating a vibrant new mixed-use community in this area of the City. However, this urban design and density cannot be achieved on the Property if the Applicant is required to provide the full amount of tree replacement on-site because the developable area would be inadequate to accommodate the density proposed nor to provide the required stormwater management. In this regard, the applicable forest conservation requirements are more appropriate for projects developed with more suburban areas with greater existing forests and tree canopies and less potential for development. Additional information regarding proposed forest conservation will be provided with the Level 2 Site Plan application.



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Fifth, as explained in detail below, the Project will not be in conflict with the Comprehensive Master Plan, which was approved and adopted on August 2, 2021 (“2040 Comprehensive Plan”).

Sixth, the Project does not constitute a violation of any provision of the Zoning Ordinance or other applicable law. As described in this letter and illustrated by the plans included in the Application, the Project meets or exceeds the development standards for the MXE Zone. Further, parking, lighting, open space, public use space, and landscaping for the Project are all in accord with the City’s requirements, as illustrated by the plans included in the Application. The Project was also specifically designed to comply with the design guidelines for all mixed-use zones, as well as the design guidelines applicable to the MXE Zone. Additionally, Applicant’s civil engineer has confirmed that the Site Plan complies with the City’s Landscaping, Screening, and Lighting Manual.

Finally, the Project is compatible with and will complement the surrounding uses and properties. The Project is surrounded by other mixed-use-zoned properties. The Project replaces outdated commercial buildings with a modern mixed-use project with life science and multi-family uses that complement the surrounding development and provide new housing and employment opportunities in the City.

7. Compliance with Comprehensive Master Plan

The Project is consistent with the 2040 Comprehensive Plan. The 2040 Comprehensive Plan designates the Property as “Office Commercial Residential Mix” (“OCRM”) on the Land Use Policy Map. 2040 Plan, pg. 393. OCRM “is the most flexible category, allowing a wide choice in mixing office, commercial, and residential uses. Uses such as research & development, breweries, distilleries, and small manufacturing may be appropriate if they do not adversely impact surrounding properties.” *Id.* at 252. In line with this flexibility, the Project includes multi-family residential and life science uses – both of which are generally encouraged by the 2040 Comprehensive Plan. *Id.* at 178, 193.

Other than the OCRM land use designation, the 2040 Comprehensive Plan only acknowledges that the Property was previously approved for redevelopment with a mixed-use project and does not make any further prescriptive recommendations for its redevelopment. *Id.* at 391. As noted above, the Applicant proposes that the Project, which is also mixed-use in nature, be constructed on the Property in lieu of the previously approved redevelopment scheme acknowledged in the 2040 Comprehensive Plan.

The Project also proposes dedication of right-of-way to meet the 2040 Comprehensive Plan Business District 1 classification for Choke Cherry Road.

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8. Adequate Public Facilities

As shown in the Scoping Form submitted with this Application, the Project will generate fewer than 30 net new peak hour trips. A limited Comprehensive Transportation Review will be provided with the Level 2 Site Plan Application to include an on-site assessment consistent with the Comprehensive Transportation Review Guidelines for developments generating fewer than 30 net new trips.

With regard to public school capacity, according to the Montgomery County Student Generation Rates for Housing Types (effective July 1, 2022), the Project is projected to generate 11 new elementary students, 5 new middle school students, and 5 new high school students or 21 new students for grades K-12. The Property is located in the Gaithersburg Cluster, and students generated by the Project would attend Gaithersburg High School, Gaithersburg Middle School, and Washington Grove Elementary School. At the time of filing of this Application, Gaithersburg High School, Gaithersburg Middle School, and Washington Grove Elementary School are projected to have adequate school capacity in the relevant test years to accommodate students generated, according to the City of Rockville FY2023 School Test. As of the filing of this Application, the Preliminary FY2024 School Test, published by the Montgomery County Planning Department, indicates that school capacity will remain adequate.

The Project will be served by public water and sewer facilities, which will be coordinated with WSSC to confirm adequacy. It will also be served by adequate public safety and fire and rescue facilities. The nearest fire station is approximately 1.9 miles away. The nearest police station is approximately 3.9 miles away.

9. Green Building Regulations

The structures in the Project will meet or exceed all applicable requirements of the City's Green Building Law (Article 14 of the City Code). In this regard, the Applicant will seek LEED Gold certification for the life sciences building and NGBS Silver for the multi-family building.

In summary, the Project is in compliance with all applicable requirements of the City Code and will address important City goals by initiating the redevelopment of the Property with a lab building that will allow the City to compete with other jurisdictions to attract high-quality life sciences employers. Further, the proposed multi-family building will help activate the Project outside of working hours and serve as a residential amenity for the employment uses in the SGID and the City.

We look forward to working with you on this matter. If you have any questions or concerns, or need any additional information, please do not hesitate to contact us.

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Very truly yours,

**MILES & STOCKBRIDGE P.C.**



Scott C. Wallace

cc: C.J. Overly, Senior Project Manager, BXP